

STATE OF MICHIGAN
COURT OF APPEALS

In re REESE, Minors.

UNPUBLISHED

May 19, 2015

No. 323320

Berrien Circuit Court

Family Division

LC No. 2012-000002-NA

Before: BECKERING, P.J., and MARKEY and SHAPIRO, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court order terminating his parental rights to the minor children, HR and AR, under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the children would be harmed if returned to the parent). Because the trial court terminated respondent's parental rights without first specifically adjudicating him as an unfit parent, we vacate the trial court's termination order and remand for further proceedings.

In January of 2012, the Department of Human Services (DHS) filed a petition against respondent and the mother of HR and AR.¹ The petition predominately focused on the mother, who was alleged to have failed to protect or support one of her other children, AK,² in a criminal case involving a family member's sexual abuse of AK. The petition also contained some allegations against respondent regarding his past substance abuse and his failure to cooperate with Children's Protective Services (CPS) in connection with AK, although a CPS caseworker indicated at the preliminary hearing that respondent was not currently a concern. On March 7, 2012, the mother pleaded no contest to the allegations in the petition, at which time the trial court assumed jurisdiction over the children. Respondent was also present at the March 7, 2012 hearing and raised no objection to the mother's plea, but declined to enter a plea himself. He made no admissions that would justify finding him an unfit parent. Thus, the trial court ostensibly assumed jurisdiction over respondent via the one-parent doctrine. After the trial court assumed jurisdiction, both respondent and the mother were ordered to comply with services

¹ The parental rights of HR and AR's mother were also terminated. She is not a party to this appeal.

² AK is not respondent's child and is not party to this appeal.

aimed at reunification. HR and AR were originally allowed to remain with the parents, but were subsequently removed in response to concerns about the parents' housing.

After more than two years of services, the DHS filed a supplemental petition on June 2, 2014, seeking termination of respondent's parental rights. A termination hearing was held on July 30, 2014, after which the trial court terminated respondent's parental rights.

On appeal, respondent argues that, because he was not individually adjudicated, the trial court did not have authority to terminate his parental rights and therefore violated his procedural due process rights when it did so. We agree.

As a threshold matter, we note that respondent is entitled to raise this issue for the first time on direct appeal from the order terminating his parental rights. See *In re Kanjia*, ___ Mich App ___, ___ NW2d ___ (December 30, 2014; Docket No. 320055), slip op at 5. Thus, our review is limited to plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). The trial court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase. *Id.* Jurisdiction is established pursuant to MCL 712A.2(b). *Id.* Generally, the proceedings are initiated when the state files a petition containing facts that constitute an offense against the child under that statute. *Id.* at 405. The respondent parent can then either admit the allegations in the petition, plead no contest to them, or demand a trial to contest the allegations. *Id.* When the petition contains allegations against a parent which would bring a child under the court's jurisdiction pursuant to MCL 712A.2(b), and those allegations are proved by an admission, plea, or by a preponderance of the evidence at the adjudication trial, the parent is properly adjudicated unfit. *Id.* "Once the court has jurisdiction, it determines during the dispositional phase what course of action will ensure the child's safety and well-being." *Id.* at 404. "While the adjudicative phase is only the first step in child protective proceedings, it is of critical importance because the procedures used in the adjudicative hearings protect the parents from the risk of erroneous deprivation of their parental rights." *Id.* at 405-406.

In *In re Kanjia*, ___ Mich App at ___, slip op at 2-3, we observed:

Before *Sanders* was decided, pursuant to the one-parent doctrine, a trial court was not required to adjudicate more than one parent; instead, a trial court could establish jurisdiction over a minor child by virtue of the adjudication of only one parent, after which it had authority to subject the other, unadjudicated parent to its dispositional authority.

* * *

However, in *Sanders*, our Supreme Court held that the one-parent doctrine violated procedural due process. Recognizing that the right of a parent to make decisions concerning the care, custody, and control of his or her children is fundamental, and that due process demands minimal procedural protections be afforded an individual before the state can burden a fundamental right, our

Supreme Court held that a parent must be individually adjudicated as unfit before the state can interfere with his or her parental rights. Because the one-parent doctrine allowed a trial court to interfere with the constitutionally protected parent-child relationship without any finding that the parent was unfit, it violated the Due Process Clause of the Fourteenth Amendment. [Quotation marks and citations omitted.]

Thus, after *Sanders*, to protect a parent's due process rights, the state must seek the individual adjudication of that parent before it may seek termination of his or her parental rights. *In re Sanders*, 495 Mich at 421-422; *In re Kanjia*, ___ Mich App at ___, slip op at 3.

Applying *Sanders* to the instant case, it is clear that respondent's due process rights were violated when the trial court terminated his parental rights without first specifically adjudicating him as unfit. At the time the trial court assumed jurisdiction and ordered the parents to comply with services, respondent had made no admissions regarding the allegations in the petition, he had not plead no contest to those allegations, and no trial had been held regarding the allegations involving respondent. See MCR 3.971; MCR 3.972. Respondent was never individually adjudicated as unfit and made no admissions of unfitness; thus, the trial court had no authority to subject him to its dispositional authority. *In re Sanders*, 495 Mich at 415, 422. *In re Sanders* was decided on June 2, 2014 and was thus controlling precedent at the time of the July 30, 2014 termination hearing. See *Riley v Northland Geriatric Ctr*, 425 Mich 668, 678; 391 NW2d 331 (1986); *Farm Bureau Mut Ins Co v Blood*, 230 Mich App 58, 67; 583 NW2d 476 (1998). Accordingly, the trial court plainly erred when it terminated respondent's parental rights without first adjudicating him as unfit. This plain error undoubtedly affected respondent's substantial rights, since his fundamental constitutional right to the care, custody, and control of his children was interfered with absent the requisite procedural safeguards. *In re Sanders*, 495 Mich at 409, 422.

We therefore vacate the trial court's order terminating respondent's parental rights and remand this case for an adjudication of respondent's fitness as a parent. Because the matter of adjudication must be considered by the trial court before it moves to the dispositional phase regarding respondent, we need not address respondent's additional argument concerning whether termination of his parental rights was in the children's best interests.

Vacated and remanded for further proceedings. We do not retain jurisdiction.

/s/ Jane M. Beckering

/s/ Jane E. Markey

/s/ Douglas B. Shapiro